

Town of Lincoln

100 Old River Road, Lincoln RI

Zoning Board of Review

April 3, 2007 Minutes

Present: Raymond Arsenault, Kristen Rao, Gabriella Halmi, Arthur Russo, Jr., David Gobeille, Town Solicitor Anthony DeSisto, Asst. Town Solicitor Mark Krieger

Excused: Jena Karempetsos, John Bart

Miscellaneous

- Chairman Arsenault welcomed new Town Solicitor Anthony DeSisto and Assistant Town Solicitor Mark Krieger.**
- Member Russo sat with full privileges.**

Minutes

- Motion made by Member Russo to accept the March 2007 Minutes as presented. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.**

Correspondence

- None**

Applications

Rita M. Caraccia, 393 Great Road, Lincoln, RI – Use Variance for two additional apartments for a total of six units on property located at 1431 Smithfield Avenue, Lincoln, RI.

AP 9, Lot 130 Zoned: RL 9

Applicant addressed the Board asking that her application be withdrawn without prejudice. Motion made by Member Halmi to accept applicant's request. Motion seconded by Member Russo. Motion carried with a 5-0 vote.

Kenneth Demers, 135 Jenckes Hill Road, Lincoln, RI – Use Variance to convert building located at 4 Chapel Lane into two (2) apartments.

AP 3, Lot 179 Zoned: BL 05/RG 7

Chairman Arsenault addressed applicant stating these applications had been continued to afford applicant time to get some engineering and legal assistance. Applicant replied that some of the applications were no longer necessary because it was his understanding that the town was changing the property to residential in the near future.

Chairman asked applicant if he had legal assistance present because there were problems with some of the applications and applicant replied he did not have legal counsel. Applicant stated he spoke with the local fire department who is concerned about the distance of the units from the fire hydrant.

Chairman asked what the proposed street access was for Lot 179. Applicant replied access would come in from next to the fire station. Chairman asked if this was the same access he was asking for Lot 89 Mapped Street Ordinance application. Applicant thought it was included in his application for Lot 89 and should have included Lot 179. Chairman informed applicant that the Board only advertised for relief for Lot 179 and recommended continuing the application and resubmit a new application for the two lots for Mapped Street relief.

Motion made by Member Halmi to continue the application to the June agenda. Motion seconded by Member Russo. Motion carried with a 5-0 vote

Mr. Demers informed the Board that he heard the Sayles Mills were being sold and he was looking to purchase Plat 3, Lot 91. Member Russo replied if applicant feels this will affect his relief under the Mapped Street ordinance for Lot 179 perhaps the application could be continued to see if a zone change affects his applications. Attorney Krieger replied he still would need to submit it for a major plan review and submit the application for a Special Use Permit. Attorney DeSisto suggested either continuing the applications or withdrawing them without prejudice rather than take a chance on having the applications denied.

Kenneth Demers, 135 Jenckes Hill Road, Lincoln, RI – Special Use

Permit to convert building located at 10/15 Chapel Lane, Lincoln into six (6) apartments.

AP 3, Lot 89 Zoned:BL 05/RG 7

Applicant addressed the Board asking that his application be withdrawn without prejudice. Motion made by Member Halmi to accept applicant's request. Motion seconded by Member Russo. Motion carried with a 5-0 vote.

Kenneth Demers, 135 Jenckes Hill Road, Lincoln, RI – Use Variance to convert building located at 10 Chapel Lane into four (4) two bedroom apartments.

AP 3, Lot 89 Zoned: BL 05/RG 7

Applicant addressed the Board asking that his application be withdrawn without prejudice. Motion made by Member Halmi to accept applicant's request. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Kenneth Demers, 135 Jenckes Hill Road, Lincoln, RI – Dimensional Variance for front yard setback for property located at 10/15 Chapel Lane, Lincoln, RI.

AP 3, Lot 89 Zoned:BL 05/RG 7

Applicant addressed the Board asking that his application be withdrawn without prejudice. Motion made by Member Halmi to

**accept applicant's request. Motion seconded by Member Gobeille.
Motion carried with a 5-0 vote.**

**Kenneth Demers, 135 Jenckes Hill Road, Lincoln, RI – Application for
Relief Under Mapped Street Ordinance for property located at 10/15
Chapel Lane, Lincoln, RI
AP 3, Lot 89 Zoned:BL 05/RG 7**

**Applicant addressed the Board asking that his application be
withdrawn without prejudice. Motion made by Member Halmi to
accept applicant's request. Motion seconded by Member Gobeille.
Motion carried with a 5-0 vote.**

**Kenneth Demers, 135 Jenckes Hill Road, Lincoln, RI – Use Variance to
convert building located at 4 Chapel Lane into two (3) apartments.
AP 3, Lot 179 Zoned: BL 05/RG 7**

**A motion had previously been made to continue this application to
the June agenda. Applicant now wants to withdraw this application
without prejudice.**

**Applicant addressed the Board asking that his application be
withdrawn without prejudice. Motion made by Member Halmi to
accept applicant's request. Motion seconded by Member Russo.
Motion carried with a 5-0 vote.**

AMICA Mutual Insurance Co, 100 AMICA Way, Lincoln, RI – Special Use Permit for the installation of an identification sign exceeding 64 sq. ft with company name facing Route 146 Northbound.

AP 31, Lot 176 Zoned: ML 0.5

Chairman Arsenault read into the record standards that need to be met for a Special Use Permit.

**Represented by: Robert Suglia, Vice President and General Counsel
Applicant owns an 87 acre campus with 4 existing buildings. AMICA was previously granted two permits for signage – one sign on Route 146 and another facing Route 295 which they decided not to construct.**

Witness

Mark Coulter, Asst. Superintendent of Corporate Services

He has worked at AMICA for twenty years. AMICA plans on placing the signage on the cloverleaf currently under construction and on Route 146 northbound. Existing signage is: 4'x18' fronting on Route 116; 14'x3' on Blackstone Valley Boulevard; sign on Route 146 at the rear of the building resulting in 474 sq.ft. of existing signage. Applicant is requesting relief for a 250 sq.ft. sign (10'x25"). A small monument sign at building #25 and one facing Route 146 will stay. The purpose of the proposed sign is to open up more visibility from Route 146 northbound traffic. The sign will be dark gray/black with gold lettering.

Chairman had trouble understanding why AMICA needs so much signage. Member Halmi asked if the sign was directional or advertising. Witness replied a little of both. Member Rao asked how many non-employees visit AMICA. Attorney replied they have 1,300 employees with new hires coming in for training at this site. Member Rao asked if they would consider removing the larger sign and attorney stated it was not in their plan. The proposed sign will be for northbound traffic coming into the campus. The new signage is black granite with gold lettering and they plan on refurbishing the old white sign. Chairman asked if they would consider scaling down the sign and attorney replied that could be considered. Chairman stated perhaps they could consider the suggestion that they redesign the larger existing sign on the western corner of the property and makes the two signs more compatible and low key. Attorney replied perhaps the Board could grant the permit conditional upon refurbishing the existing sign making it more in accordance with the proposed new sign. AMICA has an existing variance for existing signage on Route 146 and other signs on campus which are smaller in nature. Three signs are visible off campus. Member Halmi asked if the signs would be lighted and witness replied "yes".

Witness

Thomas Mandeville, Mandeville Signs

He has been contracted by AMICA for the new signage which will be similar to the existing sign on Route 146. The sign will be

constructed of aluminum; 10'x25' in size; 12" deep; non illuminated dimensional lettering; externally lit; and will sit on a concrete base. Existing sign on Route 146 is 12'x30'.

Chairman asked why the sign will be externally lit and witness replied because it is less intrusive on the area. Member Rao inquired about the base size of the new sign. Witness stated the sign will be 5'2" tall by 30' wide; 13' from grade to top of the sign; and 15' high. Existing retaining wall will remain in place. Base of sign is esthetic and not structural.

Witness

Thomas Sweeney, 72 Pine Street, Providence, RI

Submitted his resume into the record as Exhibit #1. Chairman Arsenault read into the record witness' credentials. Motion made by Member Rao to accept Mr. Sweeney as an expert witness. Motion seconded by Member Halmi. Motion carried with a 5-0 vote.

Witness is familiar with the site, inspected the area and prepared a report which he submitted into the record as Exhibit #2. AMICA is an office complex at Routes 295/116/146. Proposed sign will act as a directional on Route 146 northbound and will fit in esthetically. No other signs are located on this lot which identifies AMICA on Route 146. The proposed signage meets all ordinance requirements and is consistent with uses in the area. It will be the only identification sign on this parcel and will not alter the general character of the area.

Attorney Krieger stated this witness' expertise is not in signage or traffic - only real estate.

Chairman Arsenault read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site of the proposed sign and reviewed the submitted plans and application. The Planning Board recommends Approval of the Special Use Permit for the installation of an additional sign. The site plans specifically details the location and type of the new proposed signage. The Planning Board feels that due to the unique location and size of the property that the requested signage will clarify its location along Route 146 highway.

Motion made by Member Russo to approve the application with a condition that the existing signs on the western part of the property be modified to be compatible to existing signage in color, size and design not to exceed 330 sq.ft. including the base. Motion seconded by Member Gobeille.

Chairman asked if the attorney for applicant would consider presenting the special conditions to AMICA and return for the June meeting with additional information regarding modifications to the Route 146 sign to alleviate the Board's concerns. Attorney replied that was agreeable.

**Member Russo made a motion to withdraw his previous motion.
Member Gobeille also withdrew his previous motion.**

**Motion made by Member Russo to continue the application to the
June agenda. Motion seconded by Member Rao. Motion carried with
a 5-0 vote**

**Roland & Beth Sylvia, 17 Hammitt View Drive, West Greenwich,
RI/Martbro Properties, LLC, 650 Hopkins Hill Road, West Greenwich,
RI – Use Variance for the operation of a pet grooming plus two rental
units at property located at 960 Smithfield Avenue, Lincoln, RI.
AP 6, Lot 181 Zoned: RG 7/RL 9**

**Chairman Arsenault read into the record standards that need to be
met for a Use Variance.**

**Avenue stating he had no
objection to the proposed use (Exhibit #2). Chairman Arsenault
accepted the letter but stated signature was not notarized and
recommended they be notarized in the future.**

Witness

Edward Pimentel, AICP

Mr. Pimentel has appeared before this Board in the past as a professional land use planner. Motion made by Member Rao to accept Mr. Pimentel as an expert witness. Motion seconded by Member Halmi. Motion carried with a 5-0 vote.

Mr. Pimentel submitted into the record report dated April 3, 2007 (Exhibit #3). He visited the site and neighborhood and determined the property can be used in a permissible manner. Character of the neighborhood is commercial and property has been on the real estate market with no inquiries. There are other commercial businesses in the area. What applicant is proposing is less intensive than what is currently there – an attorney's office with 2 rental units. Proposed business is a two employee operation and appointment only. There are other duplex/multi unit and commercial business in the area and proposed use complies with all dimensional criteria. Applicant is only moving their business down the street with less parking. When the previous Zoning Board approved the use, there were only five parking spaces and an agreement with the local church for additional parking. All parking will be on site for employees and drop off customers. The unique aspect of the property is there is a lower level office with two rental units. The current property owner did not introduce this mixture of uses. Owner is not asking for additional units. The comprehensive plan acknowledges what is happening on Smithfield Avenue with commercial properties. Chairman asked what is the existing use and witness replied two residential with one professional office which is allowed by special use. The proposed use is not listed

on the Town's use table. The closest use was similar to a hair salon. The proposed uses will provide some form of treatment for animals. There are no uses for animals permitted in the use categories. Witness stated the two residential units are permitted and the office is by special use. It is his opinion of mixture of uses is allowed. It is Mr. Pimentel's opinion that the proposed use of a dog grooming salon is less intrusive than the current use. Attorney Krieger asked if any efforts were made to market the property and witness replied applicant tried to market the property as residential with a professional office. Attorney Krieger asked if any effort was made to market it solely as residential and witness replied he did not know but an effort was made to sell the property.

Witness

Santino Martinelli, Owner

Attorney Krieger asked how the property was marketed and for how long. Witness replied the property was listed for sale with signage in the window for six to seven months. He did not use internet marketing or a realtor. Efforts to sell were made solely by owner.

Member Russo asked Mr. Pimentel if he was familiar with the proposed changes to the town zoning ordinance. That the Council is now considering changes to the ordinance. He replied he knows changes being proposed but did not know when and that is why they sought out a use variance. Member Russo asked if he was aware of any changes that would affect this property. He stated he inquired

about changes from Al Ranaldi, Town Planner. Member Russo stated that perhaps the Council would be making changes to this area and if he waited one month it might be affect the application. Attorney Shekarchi replied it was part of the change and the last time he checked it had been dropped. Russell Hervieux, Zoning Official informed the Board that this particular lot was originally part of the plan. There were several lots that were dropped from the plan. Member Halmi asked Mr. Pimentel about his statement that the neighborhood is evolving into a mixed multi family and commercial environment. He replied there are two multi family apartment houses across the street, an attorney's office, three service garages and several duplexes in the area and there are more commercial uses than residential uses in the immediate area. Member Halmi asked where the rental units were located. He replied one to the left of the office and one above.

Witness

Beth Sylvia, Applicant

There will not be a dumpster on site and hours of operation are 8:00 am to 6:00 pm five days per week. Attorney Shekarchi stated an abutter, Norman Beretta, would like a fence install at the property line for privacy (between Lot 180 and 181). Barking will be kept to a minimum by placing the dogs in separate rooms while they wait for pick up. No commercial vehicles will be located on site and they will meet all signage requirements.

Chairman Arsenault read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board recommends Denial of this use variance. The Planning Board feels that the application does not meet any of the standards for relief of a use variance as presented in the Zoning Ordinance. More specifically, the Planning Board feels that the site plan does not represent a parking lot layout that works. The parking spaces do not meet the zoning standards. The Planning Board feels that the use variance will alter the general character of the surrounding area and will impair the intent and purpose of the zoning ordinance and the Comprehensive Plan.

Russell Hervieux, Zoning Official informed the Chairman that the plan they submitted tonight was a far better plan than the original and addressed parking issues raised by the Planning Board.

Opposed

Richard Pina

He is concerned about parking at the rear of the building and the two rental units at the site. He has been living in the area 34 years and stated the rental units were not legal and would like to see the Board prove they are legal. The original owner came before the Zoning Board asking to put in a kitchen for her daughter and was denied. He asked how Mr. Beretta came to own a public street. Chairman asked

him to stick with the facts of this application. Mr. Pina asked if he could come forward and look at the map applicant submitted this evening. He asked what was located at 940 because the property is located at 960 Smithfield Avenue. Chairman replied that it was a typographical error. Mr. Pina would like to see the application postponed to the next agenda so the error could be fixed. He brings his dog to the applicant and likes her.

Chairman asked Russell Hervieux, Zoning Official if the two rental units were legal and was this an existing non conforming use. Mr. Hervieux replied that two special use permits had been granted and the use was legal. One permit dated March 7, 1989 allowed converting the property into a duplex dwelling with a law office and one on June 7, 1989 to expand the footprint of the building. It was originally a single family building. There was also an agreement with the Seventh Day Adventist Church to share their parking lot.

Motion made by Member Halmi to approve the application. Motion seconded by Member Russo.

Discussion:

Member Halmi stated:

- She did not feel a hardship is not due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant.

- The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain. The current owner testified that he bought the building two years ago and should have known he might have problems renting the property in the future.
- The granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan. She does not feel the ordinance wants a business into the first floor of every building.
- The relief requested is the least relief necessary. Does not feel the applicant tried to market the property adequately or aggressively.

Chairman Arsenault stated he would like to see applicant continue her operation at a more suitable location. Member Rao felt the proposed use was more intrusive than a professional office. Member Russo stated he was struggling with the application because it did not meet the legal standards for a Use Variance.

Member Halmi withdrew her motion to approve the application.
Motion to second withdrawn by Member Russo.

Motion made by Member Halmi to deny the application stating:

- Hardship is not due to the unique characteristics of the subject land or structure.
- The hardship is a result of prior action of the applicant.

- The granting of this variance will alter the general character of the surrounding area and impair the intent or purpose of this Ordinance or the Lincoln Comprehensive Plan
- The relief requested is not the least relief necessary because the building could be used as it has been used if more aggressive marketing had been pursued.
- The subject land or structure can yield beneficial use if it is required to conform to the provisions of the Zoning Ordinance.
- That the granting of the Special Use will alter the general character of the surrounding area

Motion to deny seconded by Member Russo. Motion to deny carried with a 5-0 vote.

Ruth M. Chamberland, 1 Sayles Hill Road, Manville, RI – Comprehensive Permit Application for a two lot minor subdivision for property located at the intersection of Central Street and Division Street, Manville, RI.

AP 37, Lot 170 Zoned: RG 7

Represented by: John Shekarchi, Esquire

There are two separate buildings (five units) on one lot and Mrs. Chamberland would like to subdivide the property into two separate parcels. Sewer, water and parking are available to both lots. Applicant has a letter of eligibility from Rhode Island Housing for two units to be low/moderate income housing. Technical Review

Committee (TRC) made a positive recommendation for the proposal (submitted into the record correspondence from the TRC dated March 23, 2007 as Exhibit #1 and correspondence from Rhode Island Housing dated October 2, 2006 as Exhibit #2). Mrs. Chamberland has also appeared before the Planning Board.

Witness

Edward Pimentel, AICP

Mr. Pimentel has appeared before this Board on other applications as a professional land use planner. Motion made by Member Gobeille to accept Mr. Pimentel as an expert witness. Motion seconded by Member Rao. Motion carried with a 5-0 vote. There are two residential structures on one parcel which does not meet lot requirements. Property was treated as commercial and splitting the lot makes it residential and easier to sell by taking five existing units and making two of them affordable housing. The high interest rates for commercial property makes it difficult to sell. By creating a boundary line everything will remain it as it is allowing Mrs. Chamberland to sell the two properties. Affordable units need to be distributed equally among all the units. Everything here is directly resulting from pre-existing conditions. Total current rent for the five units is \$3,000 per month. The units will be an improvement in accordance with our code. Right now the units are deemed to be by special use (multi-family). The three unit will still require special use. By subdividing the lots it will add a driveway. Subdivision of the property will not impair our regulations as it is pre-existing

non-conforming by dimension.

Witness

Ruth Chamberlain

Her great-grandfather bought the houses in the 1900s and she was raised in one of the apartments. She put the real estate on the market two years ago and listed it with two realtors. She has had difficulty selling the property because of the interest rates on commercial property loans. Her husband died one year ago and she still wants to sell the property.

Attorney Shekarchi stated the realtors were trying to sell to first time owner occupied buyers. The requirement that they must remain affordable housing has not been an issue. The houses will be marketed for sale under affordable rent guidelines of 30 year affordability.

Chairman Arsenault read into the record Planning Board recommendation:

This application is to be reviewed under RIGL 45-53 as amended, the Lincoln Comprehensive Plan, Lincoln Affordable Housing Production Plan and the recently amended Town ordinance entitled “An Ordinance Establishing an Application and Administrative Procedures for Filing a Comprehensive Permit in Accordance with the State of Rhode Island Low and Moderate Income Housing Act – RI General Law 45-53”. This application represents the subdivision of

one lot into two lots. The current parcel contains two buildings and associated parking. One building contains two dwelling units while the other building contains three dwelling units. There are a total of five dwelling units on the subject lot. The buildings, parking and public infrastructure are all existing improvements. This proposal entails subdividing the property into two lots thereby permitting greater latitude in the marketability of the separate properties. The present configuration renders homeownership difficult considering financial institutions treat properties such as this one as commercial apartment complexes unlike duplexes and triplexes that are defined as residential dwelling units. According to the Town's Ordinance, the Comprehensive Permit application shall be presented to the Zoning Board for an advisory opinion.

Member Gobeille made a motion that the Zoning Board recommend to the Planning Board that they approve the Comprehensive Permit application in compliance with standards and provisions of the subdivision regulations and that two units be deemed low/moderate housing. Motion seconded by Member Russo. Recommendation carried with a 5-0 vote.

Motion to adjourn made by Member Russo. Motion seconded by Member Rao. Motion to adjourn carried with a 5-0 vote.

Respectfully submitted,

Ghislaine D. Therien

Zoning Secretary